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Situation of women and girls in Afghanistan*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of Yakin Ertürk, Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, on the situation of women and girls in Afghanistan, submitted in accordance with Commission resolution 2003/77.

* This document is submitted late so as to include the most up-to-date information possible.

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Report of the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, on the situation of women and girls in Afghanistan

Summary

In this report, the Special Rapporteur of the Commission on Human Rights on violence against women, its causes and consequences, welcomes the ratification of the Convention on the Elimination of All Forms of Discrimination against Women by the Government of Afghanistan as a sign of its political will and commitment to end gender discrimination. However, despite some progress over the last year, concerns remain which the Special Rapporteur has outlined, along with the remaining challenges yet to overcome. In particular, the Special Rapporteur urges the Government to take steps to tackle impunity for perpetrators of violence against women, while at the same time establish the rule of law. In this regard, the Special Rapporteur emphasizes, as a first step, the need for legal and judicial reform, in line with international standards, towards promoting and protecting the rights of women and girls.

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I. Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 2003/77 on the situation of human rights in Afghanistan, in which the Commission called on the Afghanistan Transitional Authority (ATA), in application of the Bonn Agreement, "to respect and protect the human rights of Afghan women and girls, including by providing adequate support to the Women's Ministry, protecting women from all forms of violence, ensuring equal access to education and health care, addressing the problem of their extra-legal detention and ensuring their full participation in all spheres of Afghan life" (para. 10 (e)). The Commission invited the Special Rapporteur on violence against women to continue to review the situation of women and girls in Afghanistan and to submit a report to the General Assembly and the Commission.

2. The present report supplements the section on Afghanistan of my predecessor's final report to the Commission submitted at its last session, entitled "International, regional and national developments in the area of violence against women, 1994-2003 (E/CN.4/2003/75/Add.1, paras. 893-904). That report provides an overview of the situation of women and girls in Afghanistan, with a particular focus on legislation, policies and programmes and issues of concern. To avoid duplication, the present report will only include relevant new developments in an effort to identify both opportunities as well as the continuing vulnerabilities of women and girls. It is suggested that this report be read together with the earlier report. The current report is based on a desk review of relevant information that was available on the subject.[1]

II. Opportunities and persisting vulnerability of women and girls

3. Security, political stability and a sustainable economic order continue to be the major challenges to the process of restructuring Afghan society. All credible information reviewed indicate that forces that gain from maintaining a war economy and a further destabilization of the country are still active and in close proximity to the legitimate mechanisms and apparatus of State authority. This situation threatens and undermines the efforts to create an enabling environment that is transparent and free of intimidation, harassment, oppression and violence. The vulnerability of women and girls no doubt continues to be embedded in this "chaotic" state of affairs.

4. Nonetheless, during the period under review, a number of significant positive developments have taken place in Afghanistan. The most important of these for the situation of women and girls is the ratification, without reservation, of the Convention on the Elimination of all Forms of Discrimination against Women on 5 March 2003. Ratification of the Convention, the international "bill of rights for women", offers an invaluable opportunity for Afghan women in their effort to contribute to determining the direction of change and the creation of the rule of law in their country. It provides the international legal framework that can guide the initiatives for domestic legislative reforms and actions to promote and protect the rights of women in Afghanistan, particularly in addressing discrimination in such vital areas as education, employment, marriage and family relations, health care and

reproductive health, politics, finance and law. The Afghan Independent Human Rights Commission (AIHRC) has translated the Convention into Pashto and Dari and distributed copies throughout Afghanistan. Some training has also been undertaken to ensure that the principles and the reporting obligations under the Convention are understood. These efforts need to be supported further by the international community.

5. It is also encouraging that, despite the many obstacles, large numbers of women sought to participate in public consultations on the drafting of the new constitution. It is hoped that the aspirations of Afghan women and Afghanistan's international obligations under the Convention will be fully taken into account and incorporated into the final draft of the new constitution. How the new constitution will reconcile competing claims and interests, as well as the requirements of diverse legal traditions, is an issue with fundamental implications and consequences for the status of women and girls. Therefore, as the transitional process continues, measures need to be taken to ensure the full participation of women in the Constitutional Loya Jirga and all phases of the process of review and adoption of the constitution.

6. Despite the reports of progress achieved in some parts of Afghanistan this year, a deteriorating security situation and lack of sufficient international aid jeopardize the reconstruction efforts and the initiatives for the successful implementation of development plans and programmes. Furthermore, great disparities exist between the situation of women and girls in Kabul and the rest of the country, as well as between the conditions in rural and urban areas. Impunity and continuing political instability create conditions for the emergence of new forms of violence and discrimination against women, making change a risky task for those who are vulnerable. At the same time, the prevalence of conservative and authoritarian attitudes and discriminatory traditional practices serve to sustain and perpetuate gender prejudices and their multiple manifestations of discrimination and violence against women in both the private and the public spheres. Although national policies prohibiting female education and work have been abandoned, communities and families continue to place restrictions on the behaviour, movement and activities of women and girls. Even where direct restrictions may have eased, the continuation of the unfavourable socio-political environment inhibits women from taking initiatives as fear, rather than a sense of confidence, prevails.

7. Reports indicate that there is a serious gap in matters of governance between Kabul and the periphery. Consequently, outside of Kabul women's security is threatened by the presence and influence of local commanders who reportedly commit acts of extortion, looting, harassment, kidnapping and sexual abuse of women with impunity. Rape, including significant incidence of gang rape of women and girls from minority communities in the north, women and girls from nomadic groups, female aid workers and female members of aid workers' families, is reported to be a common and recurrent manifestation of the prevailing insecurity in the country. Furthermore, since the overthrow of the Taliban, the unresolved and long-standing inter-ethnic tensions and conflicts are leading to new population movements and displacements, particularly of Pashtuns from the north, which increases the possibilities of incidents of conflict and abuse. Pashtuns are reported to have been subjected to numerous abuses, including sexual violence, killings, extortion and looting.

8. Attacks on girls' schools are endangering the ability of girls to return to school. In addition, drought, war and worsened economic conditions also have a negative impact on girls' education as families prefer to marry their daughters off at increasingly early ages, in some cases to benefit from the financial gains of the traditional practice of bride price. This practice not only denies girls the opportunity of developing their human capabilities, but also subjects them to early and frequent pregnancies, thus placing them at increased risk of complications associated with pregnancy and childbirth.

9. The high level of discrimination against women in Afghanistan is reflected in the criminal justice system. According to information received, women victims and defendants are being denied access to justice and are discriminated against by both the formal and informal justice systems.[2] A lack of gender sensitivity on the part of the police and judicial officials further compounds the intensity and diversity of the injustices experienced by individual women. Male judges and prosecutors generally display a lack of sensitivity and understanding about issues that affect the lives of women, including incidents of sexual and physical abuse. There are reportedly very few prosecutions of perpetrators of crimes against women. A multi-pronged approach will be necessary to remedy such a widespread and persistent problem, including the empowerment of vulnerable women through free legal advice and counselling, the training of judicial personnel and the empowerment of the Afghan Women Judges Association, which was founded in March 2002. Most important, however, is the urgent need to take measures to ensure that impunity for perpetrators of violence against women is not tolerated within the criminal justice system. During the past year, there have been encouraging initiatives in training and capacity-building programmes for judges and lawyers. These are no doubt modest but important steps towards the establishment of a rule of law and an accessible justice system in Afghanistan.

10. Domestic violence, which is perceived to be a private matter, is extremely common in Afghanistan. There is a failure on the part of authorities, as well as the public, to acknowledge, address and adequately tackle violence against women by their spouses, or other family members within the home. Even in serious cases, the police and courts do not treat domestic violence as a criminal offence. As a result of these factors the only cases where violence against women in the family is reportedly considered are divorce proceedings, which come before civil courts, and even then, judges reportedly fail to view allegations of physical abuse as giving rise to any form of criminal liability on the part of the husband. Reconciliation of the partners is the preferred method used by the court in cases of domestic violence and women are routinely sent back to abusive spouses. The failure to criminalize the practice or offer any form of support to women victims of domestic violence makes it almost impossible for women or third parties to bring such cases before the courts. Reports emanating from medical professionals reveal that the inability of women subjected to domestic violence to secure a divorce from an abusive husband often results in suicide. It is also reported that hospitals in some areas are receiving a significant number of cases of female burn victims, which are rarely investigated. There are also many women in detention for "running away from home" who were reportedly trying to escape abusive relationships (see below).

11. Prosecutions for cases of rape are also extremely rare within the criminal justice system. This is due, in part, to a lack of capacity within the criminal investigation department to properly investigate rape cases as well as to the existing

attitudes with regard to sexual offences, which act to silence the victim and the witnesses. According to statements by police and prosecutors, the results of virginity tests and statements by witnesses, if they exist, are currently the only supporting evidence for rape that can be produced before the court. Victims of rape are often reluctant to complain to the authorities for fear of being further shamed and for being prosecuted for unlawful sexual activity.

12. Underage and forced marriage is a crime under Afghan national law. However, the practice of forcing young girls to marry is widespread, and in some cases girls are sold to men who are much older than themselves. These acts are generally not treated as criminal offences owing to attitudes on the part of judicial personnel and the wider society. This situation encompasses a double-edged encroachment on women's human rights. On the one hand, it denies women the right to exercise control over their own lives and, on the other hand, it subjects them to a potentially abusive and life-threatening environment.

13. As a consequence of the inherent contradictions of the above practices, women continue to be vulnerable and to be incarcerated for social or sexual acts that are considered to be offences or crimes, such as the refusal to consent to arranged marriages, to run away from abusive spouses or families, and *zina*, i.e. extramarital sexual relations or adultery.

14. Many of these women have either been forced into marriage or sold by their families at an early age. In either situation, sexual and physical abuse and ill-treatment by the husband or family members of the new household is likely to take place and to be recurrent. Despite its risky consequences, these women resort to fleeing the home, often with the assistance of another man, which provides grounds for being accused of *zina*. In *zina* cases, evidence presented with regard to forced marriage and ill-treatment does not result in the punishment of those responsible for these acts. Generally, the judges fail to properly examine and consider the background of the women accused, including the nature and extent of any physical or sexual violence suffered, when making a judgement on the case.

15. A woman who is incarcerated may be held for months in prison, in conditions that are far from conforming to minimum international standards, before the case is brought before a judge. Incarceration is often justified on the grounds that the women need to be protected from violent retribution from families or communities, a need to comply with social customs and community consciousness, or the absence of social or institutional alternatives to incarceration.

16. Women and girls are also subjected to human rights abuses as a result of the practice of *jirga*, an informal judicial mechanism, that applies tribal law and traditional norms in resolving disputes and conflicts. *Jirgas* deal with a variety of cases brought before them, ranging from disputes over land and water to murder, blood feuds and all forms of "disorderly conduct", among others. The objective of the *jirga* ruling is to restore communal harmony in accordance with established conventional norms, which often rest on patriarchal hierarchies that are discriminatory with regard to women and youth. For example, a common method used by *jirgas* to end hostilities between the parties (i.e., families) involved in a conflict is to impose the payment of compensation. This can take the form of the guilty party providing the family of the victim with a young girl or girls to compensate for the grievance or damage caused. Depending upon the nature of the incident, the resolution of the conflict may also involve an exchange of girls

between the two families. Such methods of conflict resolution or compensation for damages, which more often than not involves a marriage between members of the conflicting families, not only aim to restore "justice" but also to establish alliances among the hostile parties. However, according to international law, such practices violate the prohibitions against slavery and discrimination and also constitute torture or cruel, inhuman or degrading treatment. There is no evidence of any effective State action to prevent such abuse, rescue the girls, or prosecute the perpetrators.

III. Agents and mechanisms for change

17. The Ministry of Women's Affairs is the principle institutional structure that has been established specifically to promote the participation of women in the reintegration and reconstruction process. Given the history of discrimination that Afghan women have suffered and the continuing insecurity in the country, it has a leading role to play in promoting, coordinating and advancing Afghan women's rights. The Ministry needs greater support and resources to develop its capacity to coordinate the implementation of the Convention as well as provide sound guidance over the policies and programmes of a whole range of relevant ministries and departments, especially in the more remote regions of the country.

18. The Afghan Independent Human Rights Commission (AIHRC) was set up in June 2002. It has a mandate to investigate and monitor all human rights violations and to establish a programme of human rights education. AIHRC has established regional offices and is receiving, and actively investigating, allegations of human rights abuses as well as providing training and human rights awareness campaigns. AIHRC has a plan of action specifically concerned with women's rights. According to the work plan, its main objectives are: (i) Promoting awareness about women's rights and their participation in governmental affairs; (ii) improving coordination between AIHRC, government departments, United Nations agencies, and international and national NGOs; (iii) monitoring and reporting violations of women's rights in Kabul and in the provinces; (iv) supporting women's informed and active participation in the Constitutional Loya Jirga and the elections, as well as ensuring that equality of rights between women and men are integrated into the constitution; (v) monitoring Afghanistan's legislative system to ensure the observance of respect for women's rights; (vi) monitoring the situation of women in prisons and detention centres with the assistance of the Monitoring and Investigation Section; (vii) training of AIHRC staff on protection and promotion of women's rights. The efforts of AIHRC and its satellite offices are constrained by a lack of capacity, particularly to engage in an all-encompassing judicial monitoring programme, including court observation. The Office of the High Commissioner for Human Rights (OHCHR) is providing technical assistance to strengthen AIHRC, however, further assistance from the international community is urgently needed.

19. The Judicial Reform Commission (JRC) was established in November 2002 and is composed of 11 prominent Afghan legal experts. JRC is mandated to "rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions". However, as a creation of the Bonn Agreement, JRC has no formal role in the administration of justice. Its role is limited to proposing reform strategies and seeking international donor assistance. Thus, the success of JRC depends on the willingness of the formal judicial institutions — the Supreme Court, the Ministry of Justice and the Attorney-

General's Office — to implement its suggested reforms. Nonetheless, JRC has facilitated the compilation of applicable laws and it has convened working groups that are currently redrafting legislation, including the criminal law, for presentation to ATA. JRC has also successfully initiated the establishment of the Legal Education Centre (LEC) and members of JRC have recently carried out a survey of the judicial system. Training of the judiciary is organized for young lawyers by LEC under an agreement with the Supreme Court and the Ministry of Justice. All young lawyers who wish to be considered for judicial appointment must have successfully completed the training. The second training programme, intended for sitting judges and prosecutors, is conducted by the International Development Law Organization (IDLO). It should be noted here that IDLO has apparently decided not to include human rights of women and gender sensitivity in its training modules as this is thought to be "too sensitive for Afghans". This poses a serious concern. This decision will have grave implications for women's access to justice and should be seriously reviewed.

IV. Conclusion and recommendations

20. **There is an overwhelming consensus in the information reviewed for this report that political stability is far from being established in Afghanistan. This continues to be a major challenge not only to the Afghan Transitional Authority but to the international community at large, as well as for the promotion of the human rights of women and girls and their protection from multiple forms of violence and abuse. In short, the creation of the rule of law in Afghanistan continues to be an urgent priority for governmental, non-governmental and international organizations alike. The women of Afghanistan cannot be perceived as passive spectators, or only one of the beneficiaries, of this process. It is crucial that they be part of every phase of designing and shaping the future of their country as well as their own. Therefore, in view of the above observations, the following recommendations are brought to the attention of relevant actors at the national and international levels.**

At the national level

21. **The Afghan Transitional Authority (ATA) and all groups in Afghanistan, in application of the Bonn Agreement, must:**

(a) **Respect fully all human rights and fundamental freedoms without discrimination of any kind, including on the basis of gender, ethnicity or religion, in accordance with international law;**

(b) **Adhere strictly to their obligations under human rights instruments and international humanitarian law, inter alia, in relation to women and girls.**

22. **ATA must provide the necessary support and resources to enable the Ministry of Women's Affairs to function effectively throughout Afghanistan and in line with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women and general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women to bring to an end all violations of the human rights of women and girls.**

23. **ATA should take the lead and ensure that harmful practices and rituals in the community that violate the human rights of women are eliminated. Multi-pronged strategies involving legislative and educational reforms and awareness-raising programmes through the media should be undertaken in order to assist in the transformation of discriminatory attitudes and social practices, including the exchange of girls as compensation for crimes committed by men.**

24. **All relevant actors should be mobilized, including women themselves, in a vigorous campaign to promote the full participation of women in the political, social and economic spheres of life of the country. Within this context, all segments of the society, particularly men, through formal and informal education, should be sensitized to the importance of women's role in society and their potential contributions to the reconstruction of Afghanistan. Good practices in this regard, from other Muslim countries and a dialogue with women's groups in those countries would serve to support the process and empower the promoters of change, both women and men.**

25. **Government policies and programmes addressing the issue of violence against women must focus on the promotion of the human rights of the women concerned and take measures to prevent these women from becoming more vulnerable to violence and abuse as a result of further marginalization, criminalization, stigmatization or isolation.**

26. **Women who are victims of sexual offences are not criminals; therefore, they should not be subjected to degrading protective measures against their will. Protective custody as a means of dealing with victims of gender-based violence should be replaced by alternative methods that respect women's rights and freedom. Shelters, with the collaboration of governmental and non-governmental entities, should be opened to offer security and legal and psychological counselling to women victims of violence. The reintegration of these women into their families and the community needs to be carefully designed, supervised and monitored so that they are not subjected to further shame and abuse.**

27. **The full realization of women's human rights in Afghanistan and their equal participation in as well as contribution to society cannot be realized as long as women are targets of systematic and multiple forms of violence. Therefore, ATA, as a top priority, must promote and protect the equality and human rights of women and exercise due diligence to prevent, investigate and punish all acts of violence against women by:**

(a) **Applying international human rights norms and fully implementing international human rights instruments that relate to violence against women and girls;**

(b) **Taking all necessary measures to empower women and strengthen their economic independence and protecting and promoting the full enjoyment of all their human rights and fundamental freedoms in order to allow women and girls to protect themselves better against violence and enable them to seek and demand justice;**

(c) Condemning violence against women and not invoking custom, tradition or practices in the name of religion or culture to avoid the obligations to eliminate such violence;

(d) Intensifying efforts to develop and/or utilize educational, social and other measures aimed at the prevention of violence, including the adoption and implementation of laws, the dissemination of information, active involvement with community-based players and the training of legal, judicial and health personnel and, where possible, through developing and strengthening support services;

(e) Enacting and, where necessary, reinforcing or amending domestic legislation, including measures to enhance the protection of victims, in order to investigate, prosecute, punish and redress the wrongs done to women and girls subjected to any form of violence, whether in the home, the workplace, the community or society, in custody or in situations of armed conflict, and to ensure that it conforms to relevant international human rights instruments and humanitarian law, and taking action to investigate and punish persons who perpetrate acts of violence against women;

(f) Formulating, implementing and promoting, at all appropriate levels, plans of action to eliminate violence against women, guided by, inter alia, the Declaration on the Elimination of Violence against Women, as well as relevant regional instruments pertaining to the elimination of violence against women;

(g) Supporting initiatives undertaken by women's organizations and non-governmental organizations on the elimination of violence against women and establishing and/or strengthening, at the national level, collaborative relationships with relevant non-governmental and community-based organizations and with public and private sector institutions aimed at the development and effective implementation of provisions and policies relating to violence against women, including in the area of support services for victims;

(h) Intensifying efforts to raise collective and individual awareness about violence against women, highlighting men's role in the prevention and elimination of violence, and encouraging and supporting initiatives that foster behavioural change on the part of perpetrators of violence against women;

(i) Developing and/or enhancing, including through funding, training programmes for judicial, legal, medical, social, educational, police, correctional, military, peacekeeping, humanitarian relief and immigration personnel in order to prevent the abuse of power leading to violence against women and to sensitize such personnel to the nature of gender-based acts and threats of violence;

(j) Examining the impact of, and taking measures to address, gender-role stereotypes that contribute to the prevalence of violence against women, including in cooperation with the United Nations system, regional organizations, civil society, the media and other relevant actors.

28. Capacity must be developed within law enforcement and judicial agencies to ensure that the criminal justice system is able to effectively bring the perpetrators of violence against women, including forced marriage and sale of girls, to justice. ATA, with the assistance of the international community,

should incorporate the investigation and prosecution of crimes against women into all training programmes for the police, prosecutors and judges. Furthermore, all programmes must also include training on appropriate methods of dealing with women both as victims and as accused. In order to ensure that these concerns are effectively integrated into programmes, programme budgets should be designed and itemized in accordance with the specific intervention modalities. In addition, ATA must develop codes of conduct for the judiciary and law enforcement officials that fully incorporate procedures that aim to ensure respect and protection of women both as victims and as accused. Women and girls facing violence in the family for perceived social transgressions must receive protection.

29. Affirmative measures are needed to increase the number of female police officers, prosecutors and judges. The lack of access to justice for women and the discrimination against women in the criminal justice system are compounded by the lack of female professionals working in the Afghan criminal justice system. ATA, with the assistance of the international community, should ensure that women have equal access to employment in the police and the judiciary.

30. ATA, and the international community, must act immediately to ensure that the new constitution and existing legislation are in full conformity with the Convention and the provisions of the International Covenant on Civil and Political Rights that guarantee equality and non-discrimination. In particular, steps should be taken to ensure that violence against women, including rape, the sale or handing over of women and girls to settle disputes or as compensation, and forced marriage are criminalized.

31. ATA should abolish laws, including those related to *zina*, that discriminate against women and girls and lead to their imprisonment and cruel, inhuman and degrading punishment. All efforts to review the justice system should also include an analysis of existing informal justice mechanisms. This review must assess whether these systems apply procedures and laws that are in conformity with human rights protections, including the right to a fair trial and the prohibitions against torture and ill-treatment and non-discrimination. Particular attention must be paid to the rights of women and girls under international and national law. In order to fulfil its obligation to exercise due diligence in protecting human rights, ATA must ensure that *jirgas* and *shuras* (assemblies), fully conform to international human rights law. All cases in which there are indications that a *jirga* or *shura* has perpetrated human rights abuses must be thoroughly investigated and all those participating in these abuses must be brought to justice.

At the international level

32. The international community must continue to provide support to complete the transitional process in accordance with the Bonn Agreement. Donor countries that pledged financial aid should fulfil their commitments promptly. The international community should provide long-term assistance, as well as current budget support, for the expenses of the Afghanistan Transitional Authority and for the social and economic reconstruction and

rehabilitation of Afghan society and to create sustainable change for women in Afghanistan.

33. **The international community must continue to support the Security Council mandate for the engagement of the International Security Assistance Force, to allow for stabilization of the security situation and provide support for the central administration while national security forces are being developed.**

Notes

[1] Yakin Ertürk took up her post as Special Rapporteur in August 2003 and there was insufficient time to undertake a fact-finding mission to the country.

[2] Information submitted to the Special Rapporteur by the United Nations Assistance Mission to Afghanistan, the Office of the High Commissioner for Human Rights, Amnesty International and Human Rights Watch.